

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES FRANCIS MURPHY (1), DENINE
CHRISTINE MURPHY (2),

Defendants.

Case No.12cr2497 AJB

ORDER DIRECTING COUNSEL TO
REVIEW PROPOSED
PRELIMINARY JURY
INSTRUCTION 1.2 AS MODIFIED
BY THE COURT

In that this case involves two defendants, charged in 8 counts with 3 separate crimes, the Court finds it appropriate to advise the jury preliminarily on the elements of the crimes so that they can better follow the evidence as it is presented by counsel.

In this regard, the Court has drafted a proposed preliminary instruction 1.2, "The Charges - Presumption of Innocence" as set forth below.

Counsel are ordered to review the instruction and will be asked to state their approval, objections or alternatives at the Motion in Limine hearing set for May 22, 2014.

The proposed instruction is as follows:

1.2 THE CHARGES—PRESUMPTION OF INNOCENCE

This is a criminal case brought by the United States government. The government charges the defendants with multiple crimes.

James Francis Murphy and Denine Christine Murphy are each charged with one count of corrupt interference with administration of the Internal Revenue Laws under 26 U.S.C. § 7212(a); and three counts of False Claims under 18 U.S.C. § 287.

James Francis Murphy is also charged with four counts of Fictitious Financial Obligations under 18 U.S.C. § 514.

The charges against the defendants are contained in an indictment. The indictment simply describes the charges the government brings against the defendants. The indictment is not evidence and does not prove anything.

The defendants have pleaded not guilty to the charges and are presumed innocent unless and until the government proves the defendants guilty beyond a reasonable doubt. In addition, the defendants have the right to remain silent and never have to prove innocence or to present any evidence.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes which the government must prove, by evidence beyond a reasonable doubt, to make its case:

I. 26 U.S.C. § 7212(a) - Corrupt Interference w/ Administration of IRS Laws

(1) The defendants acted corruptly or used force or the threat of force.

To act corruptly means to act with the intent to secure an unlawful advantage or benefit either for oneself or for another. To act forcibly means to act with the intent to cause bodily harm to a person. Threats of force means threats of bodily harm to the person to whom the threat is made or to a member of that person's family; and

(2) The defendants acted with the intent to impede or obstruct the due administra-

tion of justice or the intent to intimidate or impede an officer of the United States in the enforcement of the federal tax laws.

[All from 1-59 Modern Federal Jury Instructions-Criminal P 59.05]

II. 18 U.S.C. § 514 - Fictitious Obligations

(1) The defendant uttered or made or possessed a specified security that was false or fictitious.

To utter a specified security means to put it in circulation by means of a fraudulent representation that it is genuine. To merely show a security to someone without an offer to pass it is not to utter it. A security is uttered when it is delivered to another person or entity for the purpose of being passed.

To make a security means simply to bring it into being.

To possess a security means to have that security within one's control. This does not necessarily mean that the defendant must hold it physically, that is, to have actual possession of it. As long as the security is within the person's control, that person has possession of it.

The term "fictitious" means a document that purports to be genuine but is not because it is non-existent but bears a family resemblance to actual financial instruments.

The term "false" means a document that purports to be genuine but is not because it has been falsely altered, completed, signed or endorsed; and

(2) The defendant acted with intent to deceive or defraud.

To act with intent to deceive means to act with the intent to defraud another for the purpose of causing financial loss to that other person, organization or government. It is not necessary that the defendant have had any particular person or organization in mind who would be deceived or to whom the security would be passed as genuine. This element merely

requires an intent to pass the security as authentic such that the defendant intended that other persons would be misled into believing that the security was genuine. Further, the defendant must have intended to obtain some benefit, for himself or for others, from that deception, although the government does not have to prove that the defendant or anyone else actually obtained that intended benefit.

[Based off of 1-22 Modern Federal Jury Instructions-Criminal § 22.06 and *Howick*, 263 F.3d at 1068.]

III. 18 U.S.C. § 287 - FALSE CLAIMS

(1) The defendant knowingly made or presented a claim to the United States of a department or agency of the United States;

(2) The claim was made or presented against the United States of a department or agency of the United States: and

(3) The claim was false, fictitious or fraudulent as to a material fact.

A claim is false if it was untrue when made, and was then known to be untrue by the person making it or causing it to be made.

A claim is fictitious if it is not real or if it does not correspond to what actually happened, and the person making it or causing it to be made knew that it was not real at the time it was made.

A claim is fraudulent if it was falsely made or caused to be made with the intent to defraud.

A material fact is one which has a natural tendency to influence or is capable of affecting or influencing a government function. That is, it must relate to an important fact as distinguished from some unimportant or trivial detail.

An act is done knowingly if it is done voluntarily and purposefully, and not done by mistake, carelessness or other innocent reason. However,


1 the government does not have to prove that the defendant knew of the
2 relevant criminal provisions governing his conduct, as long as it proves that
3 the defendant knew that the claim was false or fictitious. There is also no
4 need for the prosecution to prove that the government relied on the false
5 claim.

6 To act with intent to defraud means to act knowingly and with the
7 specific intent to deceive, for the purpose of causing some financial or
8 property loss to the United States.

9 [All from 1-18 Modern Federal Jury Instructions - Criminal P 18.01; *See also* 2 Fed.
10 Jury Prac. & Instr. § 30:03 (6th ed.).]

11 IT IS SO ORDERED.

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13 DATED: May 19, 2014

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15 Hon. Anthony J. Battaglia
16 U.S. District Judge
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